

No. ....

IN THE

# United States Court of Appeals

FOR THE NINTH CIRCUIT

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GREAT LAKES AIRLINES, INC., a corporation, and CURREY  
AIR TRANSPORT LIMITED, a corporation,

*Petitioners,*

*vs.*

CIVIL AERONAUTICS BOARD OF THE UNITED STATES OF  
AMERICA,

*Respondent.*

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Petition for Review of Order of the Civil Aeronautics  
Board of the United States of America.

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FILED

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*To the Judges of the United States Court of Appeals for  
the Ninth Circuit:*

The petition of Great Lakes Airlines, Inc., a corporation,  
and Currey Air Transport Limited, a corporation, respect-  
fully shows to the court as follows:

## **Nature of the Proceedings.**

The order which petitioners seek to have reviewed here<sup>1</sup>  
was adopted and issued by the Civil Aeronautics Board  
during the course of a proceeding entitled, "In the Matter  
of the Investigation of Air Services by Large Irregular  
Carriers and Irregular Transport Carriers, Docket 5132."

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<sup>1</sup>Order No. E-9814, dated December 7, 1955; Appendix, Ex-  
hibit "A".

The proceeding in Docket 5132 was instituted in 1951,<sup>2</sup> and hearings commenced during 1952 in Washington, D. C.

The parties in the case consist of approximately sixty air carriers holding Letters of Registration from the Civil Aeronautics Board, designated Large Irregular Carriers and Irregular Transport Carriers<sup>3</sup> and approximately thirty intervenors consisting of air carriers holding certificates of public convenience and necessity from the Civil Aeronautics Board (herein referred to as the "Board"), railroad common carriers, and other interested parties. Bureau Counsel of the Bureau of Air Operations of the Board is also a party.

Petitioners are parties in Docket 5132 and hold Letters of Registration from the Board. Petitioners have actively participated in the proceeding since it was instituted. Considering the number of parties involved, the complexity of the issues, the size of the record, and the duration of the proceeding to date, Docket 5132 is the largest proceeding ever to come before the Board. Lengthy and repeated hearings have been held in Washington, D. C., Miami, Florida, Los Angeles, California, and Seattle, Washington, since the hearings commenced in September, 1952.

Petitioners have participated in five separate hearing sessions in Washington, D. C. and three separate hearing sessions in Los Angeles in this proceeding. The actual time spent by petitioners at these hearings in constant

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<sup>2</sup>Order No. E-5722, dated September 21, 1951; Appendix, Exhibit "B".

<sup>3</sup>Pursuant to Order No. E-9744, dated November 15, 1955, these carriers are now scheduled air carriers designated as Supplemental Air Carriers.

daily attendance approximates seven and one-half months. This does not include time spent in preparing exhibits and in other preparations for the hearings.

The record in Docket 5132 is now in excess of 30,000 pages, and the record is not yet closed. The exhibits received in evidence total in the thousands of pages.

In January, 1954, the Board radically altered the procedure in Docket 5132 by purportedly severing the public interest issues from the qualification issues, ordering the hearings to reconvene on the public interest issues and deferring further hearings on the qualification issues until after the Board had decided the public interest issues.<sup>4</sup>

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<sup>4</sup>Order No. E-8052, dated January 20, 1954; Appendix, Exhibit "C". Petitioners and numerous other parties, including the intervenors, filed petitions for reconsideration of this order, which petitions were denied by the Board in Order No. E-8244, dated April 12, 1954. Petitioners' objections to Order No. E-8052 are partially summarized in the following excerpts from the Petition for Reconsideration of Order No. E-8052 filed by petitioners on February 15, 1954:

"The Irregular Air Carrier Investigation, Docket 5132, *et al.*, was instituted by order of the Board, serial No. E-5722, dated September 21, 1951, as amended. This proceeding was in turn the outgrowth of previous prolonged unsuccessful attempts by the Board to reach a decision with respect to the issues surrounding the Large Irregular Air Carriers. (*e.g.* The Transcontinental Coach-type Service Case, Docket 3397.) The current investigation in Docket 5132 has continued from September, 1952, except for short periods of recess. During this period the testimony of witnesses for the applicants and intervenors has swelled the transcript to an incredible 26,000 pages. The exhibits thus far submitted are thousands of pages in number. The testimony and exhibits received in evidence to date have covered every conceivable aspect of public interest and public convenience and necessity, as well as the fitness, willingness and ability of the individual applicants whose cases have been presented. The cost to the applicants in this proceeding and the proceeding from which Docket 5132 evolved must be measured literally in the millions of dollars. This enormous cost to the applicants for the

Thereafter, the hearings were resumed for the purpose of receiving additional evidence on the public interest questions. Upon the close of this phase of the hearings the parties submitted briefs to the Hearing Examiners, the Examiners rendered their initial decision, the parties submitted briefs to the Board, the Board then heard oral argument from the parties, and, finally, the Board rendered its decision on the public interest questions.

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preparation and prosecution of their interests in these proceedings does not reflect the indirect expenses attributable to these proceedings. Nor does the cost reflect the dismay, frustration, exasperation and futility realized by the applicants thus far in striving to secure some determination by the Board of the issues facing it with respect to the Large Irregulars.

“At this date after seventeen months in hearing, Docket 5132 is probably not more than half way through the *hearing stage*. Approximately thirty applicants have not yet presented their cases. Conservative estimates indicate that if the hearing in Docket 5132 is ever completed, the transcript will exceed 50,000 pages, while the exhibits received in evidence will rival the size of the transcript in total number of pages.

“Distant as the final decision may have been under the original Board order instituting this proceeding, traditional concepts of fairness, equity and due process dictate that no change in the proceeding at this late date should be made where the effect of such change is unnecessarily to prolong the proceeding, to increase the expense to the applicants in the proceeding, to create confusion and uncertainty as to methods or procedure, or to jeopardize the rights of the applicants in any way whatsoever. . . .

“As to whether or not Board order E-8052 will expedite Docket 5132 in terms of time consumed in hearing, the opinion of Board members Lee and Adams in their dissenting opinion to order No. E-5082, and United Air Lines' Petition for Reconsideration of said order fully set forth the reasons why the hearings will not be expedited, and in fact may be prolonged further. It is clear that the order will not expedite the proceeding unless the Board categorically denies that any public need exists for the Large Irregulars.”

At this time, *two years* after the issuance of Order No. 8052 for the purpose of “expediting” the proceeding, the hearings in Docket 5132 are still in session in Washington, and the proceeding has not even reached the stage of filing briefs to the Examiners on the qualifications questions respecting individual carriers.



Prior to the Board's decision the Board issued an order<sup>5</sup> vacating the Examiners' findings with respect to the qualifications of applicants already heard and reopening the record on the sole question of the qualifications of the applicants. Hearings on the qualifications of the applicants who had not been heard were ordered to be scheduled.

Thereafter various parties who had previously presented evidence on their qualifications petitioned the Board to present additional evidence concerning changes in their qualifications which had occurred since their previous presentations. Petitioner Great Lakes Airlines, Inc. filed such a petition on September 1, 1955. The Board viewed the petitions favorably and issued an order reopening the record to permit petitioner Great Lakes Airlines, Inc., and other parties,

*“to present additional evidence concerning changes in qualifications which have occurred since the presentation of evidence on that issue.”*<sup>6</sup> (Italics added.)

Following this order, Petitioner Great Lakes Airlines, Inc. participated in additional hearings scheduled by the

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<sup>5</sup>Order No. E-9503, dated August 19, 1955; Appendix, Exhibit “D”. This order vacating the Examiners' findings with respect to the qualifications of applicants already heard was made necessary by reason of the failure of the Examiners to follow the Board's Order No. E-8052. In utter and complete disregard of Order No. E-8052, severing the public interest questions from the qualifications questions and deferring the decision on the qualifications of individual applicants until after the decision by the Board on the public interest questions, the Examiners proceeded to spend months deciding the qualifications questions and preparing findings and lengthy summaries of evidence with respect to the individual applicants. All of this was vacated and rendered useless by the Board in Order No. E-9503. As a result, eight months or more were completely wasted insofar as the parties were concerned and the final decision has been unnecessarily delayed by the amount of time wasted.

<sup>6</sup>Order No. E-9584, dated September 22, 1955; Appendix, Exhibit “E”.

Examiners and presented evidence in Docket 5132 in Washington, D. C. during October, 1955, and in Los Angeles during November, 1955.

At the reopened hearing in Washington in October, 1955, held pursuant to Order No. E-9584, petitioner Great Lakes Airlines, Inc. presented additional evidence concerning changes in its qualifications which had occurred since the prior presentation of evidence on its qualifications was made in 1953.

On October 12, 1955, American Airlines, Inc., an intervenor in Docket 5132, offered in evidence an exhibit<sup>7</sup> which purported to contain references to the record in another proceeding before the Board.<sup>8</sup> The offer by American was made as part of American's rebuttal to the evidence presented by petitioner Great Lakes. The references to the record in Docket 6908, contained in American's offered exhibit, related to the testimony of one Malcolm G. Robertson, given by Robertson in Docket 6908 on January 31, 1955.

Robertson's testimony in Docket 6908, portions of which American sought to have incorporated by reference in Docket 5132 by means of its offered exhibit, related to events and conversations which occurred in 1951, and were allegedly participated in by Robertson, by Robert M. Smith, then vice-president of petitioner Currey Air Transport Limited, and Irving E. Hermann, president of petitioner Great Lakes.

The subject of Robertson's testimony in Docket 6908 was covered exhaustively in Docket 5132 during the course of hearings held in Los Angeles in 1953, at which time

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<sup>7</sup>Exhibit AA-520; Appendix, Exhibit "F".

<sup>8</sup>Docket 6908, known as the "Skycoach Enforcement Case."

petitioners first presented evidence on their qualifications. The Los Angeles hearings of petitioners' cases in 1953 were in session continuously during October, November and part of December. Over 4,000 pages of the record were covered by petitioners' cases, including the rebuttal evidence presented by the intervenors. Voluminous exhibits were received in evidence during this period.

A large portion of the time was consumed by the intervenors and Bureau Counsel in exploring the alleged relationship between petitioners Great Lakes and Currey. The events and conversations testified to by Robertson in Docket 6908 in 1955, were covered in great detail in Docket 5132 in 1953. Although Robertson did not testify in Docket 5132 in 1953, his participation in the events and conversations being investigated was known to all parties as early as October 15, 1953.<sup>9</sup> Robertson was available as a witness at that time and could have been called by any party desiring his testimony during that session of the hearings or at later sessions.

Petitioner Great Lakes objected to the admission of American Airlines' proposed Exhibit AA-520 in the Washington session of the hearings in October, 1955, on the grounds: (1) that the testimony of Robertson in Docket 6908 relating to events and conversations which occurred in 1951 lay outside the scope of the proceeding in Docket 5132 as defined by Order No. E-9584, dated September 22, 1955,<sup>10</sup> which said order reopened the record solely for the purpose of taking evidence on *changes* in qualifications of applicants *which had occurred since their previous presentations on that issue*, and (2) that

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<sup>9</sup>Transcript in Docket 5132; page 22,591.

<sup>10</sup>Appendix, Exhibit "E".

American had failed to establish a proper predicate for the introduction of its proffered exhibit.

The Examiners sustained the objection of petitioner Great Lakes to the admission of American exhibit AA-520 on the ground that the testimony of Robertson lay outside the scope of the reopened proceeding as defined in Order No. E-9584. American requested permission to appeal the ruling of the Examiners to the Board and the Examiners granted American's request.<sup>11</sup>

American filed its appeal from the ruling of the Examiners with respect to the admissibility of exhibit AA-520 and coupled the appeal with an "Alternative Motion for a Limited Reopening of Proceeding." American requested the Board to: (1) reverse the Examiners' ruling appealed from, or (2) in the alternative to modify its order reopening the proceeding in Docket 5132 with respect to Great Lakes Airlines, Inc., to the limited extent necessary to permit introduction of the Robertson testimony.

Petitioner Great Lakes filed a brief in opposition to American's appeal on November 3, 1955, contending that the testimony of Robertson concerning events which occurred in 1951, two years prior to the hearings in 1953 when petitioners first presented evidence in Docket 5132 on the same subjects, lay outside the scope of the proceeding reopened solely for the purpose of receiving evi-

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<sup>11</sup>Under Section 302.18 of the Board's Rules of Practice in Economic Proceedings (14 C. F. R. 302.18), permission from the Examiner is required before a ruling of the Examiner during the course of a proceeding may be appealed to the Board.

dence of *changes* in qualifications *which had occurred since the last presentation by Great Lakes.*

On December 7, 1955, the Board adopted Order No. E-9814<sup>12</sup> denying American's appeal and affirming the ruling of the Examiners on the ground that the evidence of Robertson's testimony sought to be introduced is beyond the scope of the reopened hearing as defined by the Board's previous Order No. E-9584.<sup>13</sup> The Board then ordered:

"1. That American's appeal from the Examiners' ruling be and it is hereby denied.

"2. *That the record herein be and it is hereby reopened to explore the relationship, if any, direct or indirect, between Great Lakes and Currey.*"  
(Italics added.)

Paragraph 2 of Order No. E-9814 is the subject of this petition for review. This paragraph is not based upon any evidence of record in Docket 5132 or any other proceeding before the Board. There is nothing before the Board or within the Board's knowledge, official or otherwise, upon which this order is based.

By Notice to All Parties, dated December 9, 1955,<sup>14</sup> the Examiners notified petitioners that the hearing of evidence on the relationship between Great Lakes and Currey under Order No. E-9814, would commence on January 4, 1956, in Washington, D. C.

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<sup>12</sup>Appendix, Exhibit "A".

<sup>13</sup>Appendix, Exhibit "E".

<sup>14</sup>Appendix, Exhibit "G".

Petitioners Great Lakes and Currey filed a Petition for Reconsideration of Order No. E-9814 on December 16, 1955,<sup>15</sup> setting forth petitioners' grounds for requesting the following relief in said petition:

“(1) That the Board reconsider Order No. E-9814 and reverse paragraph (2) of said Order reopening the record;

“(2) That if the Board does not reverse said order as requested, that the Board issue an order clarifying Order No. E-9814, limiting the scope of any reopened proceeding to the taking of the oral testimony of Malcolm G. Robertson, and any cross-examination and rebuttal in connection therewith;

“(3) That the Board stay the hearing in Docket 5132 with respect to these Petitioners now set for 10:00 A.M., January 4, 1956, in Washington, D. C., pending the Board's decision on this Petition;

“(4) That any hearing held pursuant to Order No. E-9814 or any further order be held in Los Angeles, California, with respect to these Petitioners;

“(5) That the Board make an immediate decision on this Petition in order to allow Petitioners sufficient time to seek judicial review in accordance with Section 1006 of the Civil Aeronautics Act of 1938, as amended (49 U. S. C. A. 646);

“(6) For such other and further relief as may be just and proper.”

The Board denied the petition for reconsideration on December 23, 1955.<sup>16</sup>

The commencement of the hearings on the alleged relationship between petitioners Great Lakes and Currey has

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<sup>15</sup>Appendix, Exhibit “H”.

<sup>16</sup>Order No. E-9871; Appendix, Exhibit “I”.

now been postponed at the request of petitioners from January 4, 1956, and the hearings are now scheduled to commence on or about January 17, 1956.<sup>17</sup> Petitioners requested a postponement in order to permit them to file this petition and have a motion for stay heard prior to the commencement of the hearings.

Petitioners, by virtue of this petition, seek to have paragraph 2 of Order No. E-9814 set aside and annulled, and further seek to have said order stayed pending final determination of this petition.

### **Jurisdiction and Venue.**

This court is given jurisdiction to review the order in question herein by the provisions of the Civil Aeronautics Act of 1938, as amended, Section 1006; 49 U. S. C. 646.

Petitioners have their principal places of business in the State of California, within this judicial circuit.

### **Grounds on Which Relief Is Sought.**

Petitioners, as a basis for review of paragraph 2 of Board Order No. E-9814, rely upon the following grounds:

1. The Board's order is contrary to the law and is not supported by any substantial evidence.
2. The Board's order is arbitrary, unreasonable and capricious in that it compels petitioners, as parties in Docket 5132, to submit to lengthy and complex hearings without reason or basis in fact or law.

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<sup>17</sup>Telegram from Examiner Wiser, dated December 29, 1955; Appendix, Exhibit "J".

3. The Board's order is arbitrary, unreasonable and capricious in that it compels petitioners, as parties in Docket 5132, to submit to the same lengthy and complex hearings twice in the same proceeding on identical issues without reason or basis in fact or law.

4. The Board's order subjects petitioners to unequal, unfair and discriminatory treatment with respect to other parties in the same proceeding similarly situated, in that said order, contrary to and inconsistent with existing Board orders, singles out petitioners from some sixty Supplemental Air Carriers and requires petitioners alone to submit to additional protracted hearings on matters already covered exhaustively without reason or basis in fact or law.

5. The Board's order will result in irreparable damage to petitioners caused by a disruption of their business for an indefinite period, an additional and wholly unnecessary crushing burden of expense, and loss of public and employee goodwill.

6. The Board's order violates due process as to petitioners under the Constitution of the United States and the Administrative Procedure Act, 5 U. S. C. 1001, *et seq.*, for the reasons stated above.

7. The Board's order is an abuse of discretion amounting to prejudicial error for all of the reasons stated above.

8. The Board's denial of petitioners' petition for reconsideration of said order is an abuse of discretion, is contrary to law and is not supported by any substantial evidence.

9. Petitioners have no adequate legal remedy.



**The Relief Prayed.**

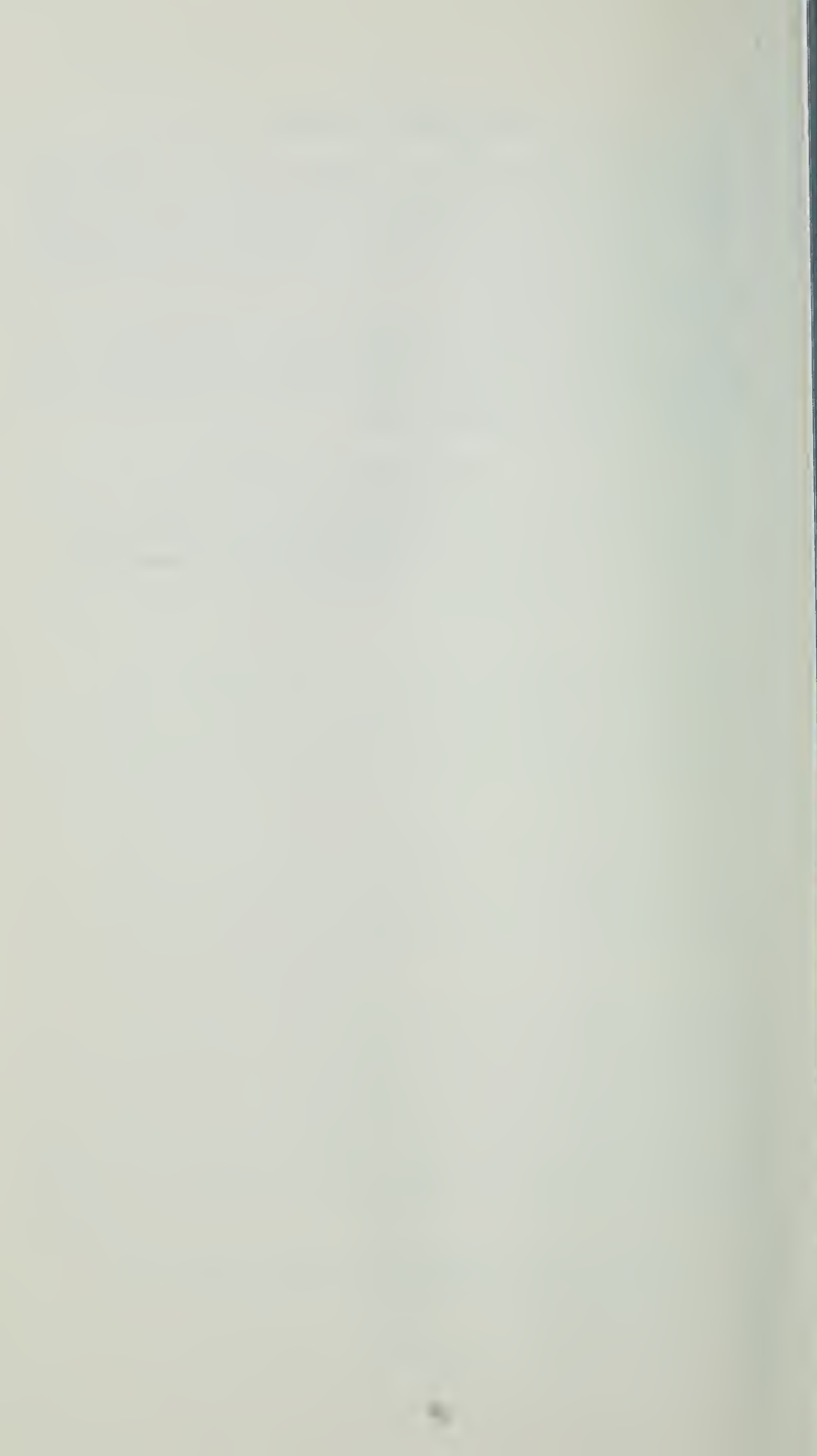
Wherefore, petitioners pray that this Court review the order of the Civil Aeronautics Board complained of, and:

1. That paragraph 2 of said Order No. E-9814 be set aside and annulled;
2. That said Order be stayed pending final determination of this petition, and for such other and further relief as to the Court may seem just.

KEATINGE AND OLDER,

By CHARLES H. OLDER,

*Attorneys for Petitioners.*







## APPENDIX.

### Exhibit "A."

Order No. E-9814

UNITED STATES OF AMERICA  
CIVIL AERONAUTICS BOARD  
Washington, D. C.

Adopted by the Civil Aeronautics Board at its office in Washington, D. C., on the 7th day of December, 1955.

In the matter of the Large Irregular Air Carrier Investigation. Docket No. 5132, *et al.*

ORDER DENYING APPEAL AND ENLARGING SCOPE OF  
HEARING.

This matter comes before the Board on the appeal of American Airlines, Inc. (American) from the ruling of Examiners Ralph L. Wisner and Richard A. Walsh, made in the reopening hearing on the qualifications of Great Lakes Airlines, Inc. (Great Lakes), refusing the admission into evidence of an exhibit offered by American. The exhibit consists of excerpts from the transcript in the *Skycoach Enforcement Case*, Docket No. 6908, purporting to be portions of the testimony of one Malcolm G. Robertson, who testified in that proceeding on January 31, 1955. It was offered by American under Rule 24(i) of the Rules of Practice in rebuttal to Great Lakes' case. Upon objection by Great Lakes, the Examiners ruled that since the matters contained in the exhibit related to events alleged to have occurred in 1951, the evidence was beyond the scope of the reopened hearing which by Order No. E-9584, adopted September 22, 1955, is limited to "changes in qualifications which have occurred since the presentation of evidence on that issue with respect to \* \* \*

Great Lakes.” The Examiners did not reach the issue whether Robertson’s testimony is admissible in the form presented.

Upon consideration of American’s appeal and great Lakes’ brief in opposition, the Board concludes that the evidence sought to be introduced is beyond the scope of the reopened hearing on Great Lakes’ qualifications as defined in the Board’s previous order. The Examiners’ ruling should therefore be affirmed and the appeal denied.

However, American’s appeal is coupled with an alternative request that the proceeding be reopened for the limited purpose of receiving Robertson’s testimony. We find merit in this request. In view of the fact that Robertson’s testimony, if credited, raises a question of a possible violation of Sections 408 and 409 of the Act by persons holding the controlling stock interest in Great Lakes and may affect the credibility of testimony offered by Great Lakes in the prior hearing as to its qualifications, the Board concludes that it is in the public interest to reopen the proceeding for the purpose of exploring the relationship, if any, direct or indirect, between Great Lakes and Currey Air Transport, Ltd. (Currey).

It Is Therefore Ordered:

1. That American’s appeal from the Examiner’s ruling be and it is hereby denied.
2. That the record herein be and it is hereby reopened to explore the relationship, if any, direct or indirect, between Great Lakes and Currey.

By the Civil Aeronautics Board:

/s/ M. C. Mulligan

M. C. Mulligan

(Seal)

Secretary.

## Exhibit "B."

Provisions of Order No. E-5722 Dated September 21, 1951, as Amended by Order No. E-5814 Dated October 25, 1951, Order No. E-6017 Dated January 8, 1952, and Order No. E-6184 Dated March 6, 1952.

### ORDER INSTITUTING INVESTIGATION.

Although from time to time since the adoption of the original "non-scheduled" exemption in 1938 the Board has considered the status of irregular transport operations in rule making and other proceedings and has altered the conditions under which such services could be conducted, no formal investigation involving hearings with respect to the services performed by the Irregular Air Carriers and Irregular Transport Carriers has occurred since the issuance of the Board's opinion on May 17, 1946, in Docket No. 1501 (6 C.A.B. 1049). In the interim, there have been numerous and significant changes in conditions affecting air transportation and the place of non-certificated operations in the air transportation system. It therefore appears to be desirable to institute a general investigation to obtain further and current economic and other information concerning noncertificated operations in order that the Board may determine its future policy with respect to Large Irregular Carriers and the Irregular Transport Carriers.

In addition to the foregoing, at the present time there are on file with the Board numerous applications, filed by the existing Large Irregular Carriers pursuant to Section 291.16 of the Board's Regulations, requesting individual exemption orders relieving such carriers from the provisions of section 401 of the Act which prevent such carriers

from engaging in irregular air transportation. Moreover, some of the Irregular Transport Carriers who have already received individual exemption orders as a result of Board approval of their individual exemption applications filed pursuant to Section 291.16 have requested reconsideration or modification of the terms and conditions of such orders, particularly with respect to the so-called 3- and 8-trip limitation in such orders. Since many of these applications and requests raise common or related issues of both law and fact, it would be advantageous and conducive to the proper dispatch of business and to the ends of justice to consolidate them into one proceeding. In addition, the applications of the Irregular Transport Carriers should be reopened and consolidated with this proceeding in order that the conclusions of policy formulated by the Board in this proceeding may be made applicable, if that be deemed appropriate, to the Irregular Transport Carriers.

Accordingly, It Is Ordered:

1. That an investigation be and it hereby is instituted by the Board into all matters relating to and concerning air transportation conducted by (a) all Large Irregular Carriers as defined by Part 291 of the Board's Economic Regulations, who hold effective Letters of Registration on the date of adoption of this order (including Modern Air Transport, Inc.), and (b) all Irregular Transport Carriers to whom individual exemption orders have been issued exempting them from the provisions of section 401 insofar as such provisions would otherwise prevent them from engaging in air transportation on an irregular and infrequent basis, such investigation to include an inquiry into the following issues:



(1) Is there a need for air transportation services by the Large Irregular Carriers and Irregular Transport Carriers in addition to and supplemental to services performed by the carriers holding certificates of public convenience and necessity (hereinafter called the "certificated carriers").

(2) If the answer to the foregoing issue is in the affirmative, what type or types of such supplemental services would be best adapted to the performance of the transportation service required to meet the need. In this connection, the following will be considered:

- a. Geographical distribution.
- b. Frequency and degree of irregularity.
- c. Types of traffic to be carried, i.e., persons, property, and mail.
- d. Relative price of service.
- e. Character of obligations to the public.

(3) What would be the effect of such supplemental services on the air transportation system and are such services in the public interest? Would such services:

- a. Encourage and promote the development of an air transportation system properly adapted to the present and future needs of the foreign and domestic commerce of the United States, of the Postal Service, and of the national defense.
- b. Promote the regulation of air transportation in such manner as to recognize and preserve the inherent advantages in such transportation.
- c. Promote adequate, economical, and efficient service by air carriers at reasonable charges, without unjust discriminations, undue prefer-

- ences or advantages, or unfair or destructive competitive practices.
- d. Foster sound economic conditions in air transportation.
  - e. Constitute the type of competition that would assure the sound development of an air transportation system properly adapted to the needs of the foreign and domestic service of the United States, of the Postal Service, and of the national defense.
  - f. Promote the regulation of air transportation to improve the relations between, and coordinate transportation by, air carriers.
  - g. Promote the regulation of air transportation to assure the highest degree of safety in such transportation.
  - h. Be conducted economically on a continuing basis.
  - i. Involve diversion of traffic, including the most profitable long-haul traffic (frequently referred to as "cream-skimming"), from the certificated carriers.

(4) Is the Board empowered under the Act, as now written to authorize, by certificate of public convenience and necessity under section 401 of the Act or by exemption under section 416 of the Act, such supplemental services limited as to type of service, type of traffic, quality or quantity of service, and/or equipment used, or otherwise restricted or defined.

(5) Should such supplemental services be authorized in whole or in part by permanent or temporary

certificate of public convenience and necessity, or by exemption orders or regulations issued pursuant to section 416(b) of the Act, or by more than one of these methods depending upon the facts and circumstances presented in individual cases, and should any classes or groups of carriers be established.

(6) What conditions, regulations or other requirements should be imposed by the Board for the purpose of achieving and defining such supplemental services, including

- a. the extent to which existing applicable regulations, limitations, restrictions or other requirements should be modified or amended, including, for example, the modification of the so-called 3- and 8-trip limitation, requirements relating to lease of aircraft, etc.
- b. whether maximum or minimum rates, fares and charges should be established and made applicable to such supplemental services.

(7) Should the supplemental services be provided by air carriers already certificated or exempted or by air carriers yet to be certificated or exempted.

2. That there are hereby consolidated into this proceeding the proceedings on the pending applications for individual exemption orders filed by the following Large Irregular Carriers, as follows:

Docket No. 3945, Aero Finance Corporation

Docket No. 3845, Air Cargo Express, Inc.

Docket No. 3799, Air Services, Inc.

Docket No. 3840, Air Transport Associates, Inc.

Docket No. 3895, All-American Airways, Inc.

- Docket No. 3908, American Air Transport, Inc.  
Docket No. 3937, Arctic-Pacific, Inc.  
Docket No. 3949, Argonaut Airways Corporation  
Docket No. 3918, Arnold Air Service, Inc.  
Docket No. 3889, Aviation Corporation of Seattle  
Docket No. 3901, Caribbean-American Lines, Inc.  
Docket No. 3798, Central Air Transport, Inc.  
Docket No. 3876, Coastal Cargo Co., Inc.  
Docket No. 3835, Continental Charters, Inc.  
Docket No. 3903, Economy Airways, Inc.  
Docket No. 3914, Federated Airlines, Inc.  
Docket No. 3925, Freight Air, Inc.  
Docket No. 3890, General Airways, Inc.  
Docket No. 3894, Great Lakes Airlines, Inc.  
Docket No. 3869, Hemisphere Air Transport  
Docket No. 3821, Kesterson, Inc.  
Docket No. 3939, Los Angeles Air Service  
Docket No. 3887, Meteor Air Transport, Inc.  
Docket No. 3844, Miami Airline, Inc.  
Docket No. 3854, Modern Air Transport, Inc.  
Docket No. 3779, Monarch Air Service  
Docket No. 3842, New England Air Express, Inc.  
Docket No. 3948, Pearson-Alaska, Inc.  
Docket No. 3868, Peninsular Air Transport  
Docket No. 3915, Regina Cargo Airlines, Inc.  
Docket No. 3941, Robin Airlines, Inc.  
Docket No. 3806, Royal Air Service  
Docket No. 3905, Seaboard & Western Airlines, Inc.  
Docket No. 3875, Skytrain Airways, Inc.

Docket No. 3917, Skyways International Trading and Transport Co., Inc.

Docket No. 3933, Sourdough Air Transport

Docket No. 3926, Southern Air Transport

Docket No. 3805, Trans-Alaskan Airlines, Inc.

Docket No. 3893, Trans American Airways

Docket No. 3879, Trans Caribbean Air Cargo Lines, Inc.

Docket No. 3896, Transocean Air Lines

Docket No. 3910, Trans National Airlines, Inc.

Docket No. 3846, Twentieth Century Air Lines, Inc.

Docket No. 3811, U. S. Aircoach

Docket No. 3947, United States Overseas Airlines, Inc.

Docket No. 3913, World Airways, Inc.

3. That the proceedings on the following applications for individual exemption orders be and they hereby are reopened and consolidated into this proceeding:

Docket No. 3916, Airline Transport Carriers, Inc.

Docket No. 3934, American Air Export and Import Company

Docket No. 3784, American Flyers, Inc.

Docket No. 3874, Associated Air Transport, Inc.

Docket No. 3833, Blatz Airlines, Inc.

Docket No. 3929, Capitol Airways, Inc.

Docket No. 3936, Conner Air Lines, Inc.

Docket No. 3951, Currey Air Transport, Ltd.

Docket No. 3848, Johnson Flying Service, Inc.

Docket No. 4233, Overseas National Airways

Docket No. 3921, Paul Mantz Air Services

Docket No. 3938, Quaker City Airways, Inc.

Docket No. 3780, Remmert-Werner, Inc.

Docket No. 3919, S. S. W., Inc.

Docket No. 3839, Standard Air Cargo

Docket No. 3922, Stewart Air Service

Docket No. 3902, The Unit Export Company, Inc.

Provided: that there shall be excluded from the issues in such reopened proceedings listed in this paragraph 3 any diminution in the period of authorization provided in the individual exemption orders issued to the applicants, but that the grant of larger authorization, and the question of renewing these exemptions upon the same or different terms shall be considered.

4. (Deleted).

5. That this proceeding be assigned for hearing before an Examiner of the Board, at such times and places as may be hereafter designated.

Exhibit "C."

Order No. E-8052

UNITED STATES OF AMERICA  
CIVIL AERONAUTICS BOARD  
Washington, D. C.

Adopted by the Civil Aeronautics Board at its office in Washington, D. C. on the 20th day of January, 1954.

In the Matter of the Investigation of air services by Large Irregular Carriers and Irregular Transport Carriers. Docket No. 5132 *et al.*

ORDER.

It Appearing to the Board That:

1. The general purposes of this proceeding, instituted by order of the Board, Serial No. E-5722, dated September 21, 1951, as amended, are twofold. The first purpose is a general investigation into matters relating to and concerning air transportation conducted by the Large Irregular Air Carriers and Irregular Transport Carriers to determine whether there is a public need for limited additional and supplemental air service by such carriers and the terms and conditions under which any service found to be required should be authorized. These are essentially the matters set forth in paragraphs numbers 1(1) through 1(7) of Order No. E-5722, and involve issues of public convenience and necessity and public interest as those terms are used in the Act. (They are referred to collectively herein as the "public interest" questions.) The second purpose is to determine, in the event services of this type are found to meet a public need, which of the various applicants should be granted operating authority. This latter issue involves not only the question of fitness,

willingness, and ability raised by the applications for certificates under Section 401, but also any question of qualification and selection of individual carriers which may arise in connection with applications for exemption under Section 416(b). The Board has consolidated in this proceeding 208 pending applications by these carriers for authority to operate limited additional and supplemental air service under exemption or certificate of public convenience and necessity;

2. The hearings in this proceeding have been in almost continuous session since September 1952. General economic presentations relating to the public interest questions were made at the beginning of the hearing by 25 interveners and interested persons, and evidence with respect to the applications of thirty specific applicants has been heard. Thirty cases concerning individual applicants remain to be heard, and pending motions by several parties request that a final session be held for receipt of economic evidence of a general nature to be submitted in the light of the presentations of the applicants and of events occurring since the interveners presented their general evidence in 1952;

3. Evidence on their mode of operation and other aspects of fitness, willingness, and ability has been heard with respect to a sufficient number of the applicants to present to the Board a representative cross section of the irregular air carrier industry insofar as needed to determine the public interest questions related to the air transportation role, if any, to be assigned the irregular air carriers. Accordingly, the evidence to be received with respect to the remaining applicants' mode of operation and other aspects of fitness, willingness, and ability



will be largely cumulative insofar as concerns its use in determining such public interest questions;

4. On the basis of its experience thus far in this proceeding and the evidence adduced in the hearings up to the present time it is in the public interest to separate the general public interest questions and the issues regarding qualification of and selection; to receive the public interest evidence of the parties not yet heard on the public interest question and proceed to decision on that question; and to defer further hearing with respect to the qualification evidence of the applicants who have not yet been heard on that issue until after the basic decision on the public interest questions has been reached. In the opinion of the Board this will not only assist in accomplishing the desirable purpose of expediting decision on the public interest questions thus more quickly clarifying the future status of the irregular air carrier industry as a whole, but in addition will serve to expedite any further hearings that may be required on the question of qualification and to present the issues to the Board under circumstances that will assist it in arriving at a sound decision.

5. Unless a change in procedure is made, the hearings yet to be held will consume a substantial amount of time and the age of a large part of the earlier record may seriously impair its value and considerable rehearing may be needed;

6. A large part of the time spent in hearing evidence on individual applicants has been consumed in hearing matters relating to their mode of operation and fitness, willingness, and ability. The evidence that has been adduced will be useful in appraising the overall public interest problems, but such evidence on a representative cross section of the industry having been obtained, fur-

ther evidence of that type would not be needed for such appraisal but would be limited primarily to use in selecting individual carriers for authorization;

7. Further hearing at this time which would be devoted largely to receipt of evidence on fitness, willingness, and ability of the applicants is not necessary to reach a decision on the issue related to public interest and public convenience and necessity;

8. A decision on the role, if any, to be assigned to the Large Irregular Carriers and Irregular Transport Carriers could be reached much earlier if additional evidence on the issue of qualification be excluded in the further hearings prior to such decision, and the parties not yet heard limit their evidence to other matters relating to the requirements of the public interest and public convenience and necessity;

9. With such limitation of the issues, the Board could, after reaching its decision on the requirements of the public interest and the public convenience and necessity, order whatever further hearings on the issue of qualification such decision may require;

10. The parties would be able to make such later presentations on qualification more definite if made in the light of the Board's decision on the public interest aspect;

The Board finding that expeditious handling of the proceeding requires the action hereinafter ordered,

It Is Ordered That:

1. Holding of further hearing and receipt of additional evidence on issues relating to the identity, mode of operations, violations, and other aspects of the qualification of individual applicants be deferred until further order of the Board;

2. Further hearing be held at the earliest feasible time at which opportunity to present evidence on the requirements of the public interest and public convenience and necessity, particularly the issues set forth in paragraphs numbers 1(1) through 1(7) of Order Serial No. E-5722, dated September 21, 1951, as amended, be afforded to the individual applicants not yet heard, and opportunity be afforded to supplement previous presentations on these issues of the proceeding in the light of new matter that has been brought out since presentations at the beginning of the hearing and new facts that have since become available;

3. The issues in this proceeding with respect to the requirements of the public interest and the public convenience and necessity, as set forth in paragraphs numbers 1(1) through 1(7) of Order Serial No. E-5722, dated September 21, 1951, as amended, be decided before hearing further evidence on the qualification of individual applicants.

By the Civil Aeronautics Board:

/s/ M. C. Mulligan  
M. C. Mulligan

(Seal)

Secretary.

Members Lee and Adams, Dissenting:

We cannot agree with the majority's decision to separate the general public interest question from the issues regarding qualification and selection of carriers because we do not believe that such action will expedite the disposition of this proceeding. On the contrary, it is our view that the present action of the majority will actually require additional time for final decision to be reached

unless the majority finds that there is no place for irregular air carriers in air transportation and therefore dismisses all of the applications on the ground that such services are not required. Only if this result is reached by the majority will the proceeding be expedited.

Under the present action of the majority, if the Board finds that there is a place for irregular carriers in air transportation, it will be necessary for the remaining 30 applicants in this case to present their views not only with respect to the question of fitness and ability but with respect to the public interest issue as well. As a matter of law, these applicants are entitled to fully present their case on both issues which means that they must be permitted to present evidence at the hearings, file briefs to the examiner, and after the issuance of an examiner's initial decision, file briefs and present oral argument to the Board with respect to both issues. All of these procedural steps will require a substantial period of time because instead of presenting one set of briefs, having one examiner's initial decision, and having one oral argument, it will be necessary to have two sets of briefs, two examiner's initial decisions, and two oral arguments before the decision could finally be implemented. This, of course, would require a substantial period of time and in the final analysis would delay the outcome of this proceeding for at least a year. Under the circumstances, we cannot agree with the procedure adopted by the majority which can expedite this proceeding *only* if the Board finds that the public interest does not require the services of irregular carriers. We are not prepared to make that finding at this time.

/s/ JOSH LEE

/s/ JOSEPH P. ADAMS.

Exhibit "D."

Order No. E-9503

UNITED STATES OF AMERICA  
CIVIL AERONAUTICS BOARD  
Washington, D. C.

Adopted by the Civil Aeronautics Board at its office in Washington, D. C., on the 19th day of August, 1955.

In the matter of the Large Irregular Air Carrier Investigation. Docket No. 5132 *et al.*

Received Aug. 22, 1955. Keatinge, Arnold & Older.

ORDER REOPENING PROCEEDING.

A full public hearing having been held in the above-entitled proceeding, and the Board having considered the record and the briefs filed and having heard oral argument, and it appearing that:

1. The proper disposition of this proceeding requires the determination by the Board of the scope of supplemental air transportation to be furnished by large irregular air carriers and the designation of which of the applicants are qualified to render the service.

2. The formulation of the Board's views in an Opinion delineating the scope of required supplemental air transportation will take a period of time.

3. A large number of the applicants have not been heard with respect to their qualifications, and as to those already heard on this question, certain interested parties refrained from filing briefs to the Examiners due to doubt as to whether the matter of qualification was then ripe for decision.

4. It is in the public interest and would expedite the conclusion of this proceeding to proceed forthwith, in the same manner as heretofore, with the hearings as to the qualifications of those applicants who have not yet been heard as to their qualifications, and that such hearings may properly be conducted pending the preparation of the Board's Opinion delineating the scope of supplemental air transportation to be authorized.

Therefore, It Is Ordered That:

1. The record herein be and it is hereby reopened on the sole question of the qualifications of the applicants.

2. Hearings on the qualifications of applicants who have not been heard as to their qualifications be scheduled at the earliest possible dates.

3. The ultimate findings of the Examiners with respect to the qualifications of applicants already heard be and they are hereby vacated, and the Examiners be and they are hereby directed to reconsider such findings in the light of the briefs to be filed by the parties with the Examiners and to make new findings as to the qualifications of such applicants.

By the Civil Aeronautics Board:

/s/ M. C. Mulligan  
M. C. Mulligan  
Secretary.

(Seal)

Exhibit "E."

Order No. E-9584

UNITED STATES OF AMERICA  
CIVIL AERONAUTICS BOARD  
Washington, D. C.

Adopted by the Civil Aeronautics Board at its office in Washington, D. C. on the 22nd day of September, 1955.

In the matter of the Large Irregular Air Carrier Investigation. Docket No. 5132 *et al.*

ORDER.

Petitions were filed on September 1, 1955, by Great Lakes Airlines, Inc., on September 2, 1955, by All American Airways, Inc., American Air Export and Import Company, Capitol Airways, Inc., Overseas National Airways, Inc., Trans Caribbean Airways, Inc., and United States Overseas Airlines, Inc., on September 6, 1955, by Economy Airways, Inc., and on September 7, 1955, by Central Air Transport, Inc., in which the petitioners ask permission to present additional evidence concerning their qualifications.

By petition filed September 14, 1955, Abilene & Southern Railway Co., *et al.*, oppose the requested reopening.

The Board finds that the petitions contain allegations of substantial changes that have occurred since the petitioners originally presented their evidence which justify reopening of the record to permit the parties to present additional evidence concerning the qualifications of the petitioners.

Accordingly, It Is Ordered:

1. That the record herein be and it is reopened to permit the parties to present additional evidence concerning changes in qualifications which have occurred since the presentation of evidence on that issue with respect to All American Airways, Inc., American Air Export and Import Company, Capitol Airways, Inc., Central Air Transport, Inc., Economy Airways, Inc., Great Lakes Airlines, Inc., Overseas National Airways, Trans Caribbean Airways, Inc., and United States Overseas Airlines, Inc.

2. That hearings to receive the aforesaid evidence be scheduled at the earliest possible date.

By the Civil Aeronautics Board.

/s/ M. C. Mulligan

M. C. Mulligan

(Seal)

Secretary.



Exhibit "F."

C.A.B. Docket No. 5132, *et al.*

Exh. No. AA-520

Page 1 of 1

EXCERPTS FROM TESTIMONY OF MALCOLM G. ROBERTSON  
IN THE SKYCOACH COMPIANCE CASE, DOCKET NO.  
6908, JANUARY 31, 1955.

Transcript

<u>Page</u>	<u>Lines</u>
96	7-21 incl.
97	5-8 incl. (excluding words stricken).
98	3-end of page incl.
99	1-16 incl.
102	22-24 incl.
103	12-20 incl.
104	7-end of page incl.
105	Entire page.
106	8-21 incl.

Exhibits OC-34 and OC-35.

Exhibit "G."

CIVIL AERONAUTICS BOARD  
Washington 25

December 9, 1955

Large Irregular Air Carrier Investigation. Docket No. 5132 *et al.*

Notice to All Parties:

Hearing of evidence remaining to be heard on the qualifications of applicants is hereby set for 10:00 a. m., January 4, 1956, in Room E-206, Temporary Building No. 5, 16th and Constitution Avenue, N. W., Washington, D. C. Evidence concerning these applicants will be heard in the following order:

1. Evidence on relationship between Great Lakes and Currey under Order No. E-9814, dated December 7, 1956, reopening proceeding.
2. Arnold Air Service, Inc.
3. Argonaut Airways Corporation
4. Continental Charters, Inc.
5. Miami Airline, Inc.
6. Peninsular Air Transport
7. Central Air Transport, Inc.

In order that the parties may make appropriate plans they are advised that the Examiners contemplate fixing a date for filing of briefs to the Examiners which will be approximately thirty days after completion of the hearing.

RALPH L. WISER

Ralph L. Wiser

RICHARD A. WALSH

Richard A. Walsh

Hearing Examiners.

Exhibit "H."

BEFORE THE  
CIVIL AERONAUTICS BOARD.

In the Matter of the Investigation of Air Services by Large Irregular Carriers and Irregular Transport Carriers. Docket No. 5132, *et al.*

PETITION FOR RECONSIDERATION OF BOARD ORDER NO. E-9814, DATED DECEMBER 7, 1955, ON BEHALF OF GREAT LAKES AIRLINES, INC. AND CURREY AIR TRANSPORT LIMITED.

Dated: December 16, 1955.

Communications with respect to this document should be sent to: Keatinge and Older, 621 South Spring Street, Los Angeles 14, California. Attorneys for Petitioners.

BEFORE THE  
CIVIL AERONAUTICS BOARD.

In the Matter of the Investigation of Air Services by Large Irregular Carriers and Irregular Transport Carriers. Docket No. 5132, *et al.*

PETITION FOR RECONSIDERATION OF BOARD ORDER NO. E-9814, DATED DECEMBER 7, 1955, ON BEHALF OF GREAT LAKES AIRLINES, INC. AND CURREY AIR TRANSPORT LIMITED.

Great Lakes Airlines, Inc. and Currey Air Transport Limited, applicants in Docket 5132, *et al.*, petition the Board for a reconsideration of Board Order No. E-9814, dated December 7, 1955, upon the following grounds:

I.

By Order No. E-9814, the Board ordered:

- “1. That American’s appeal from the Examiners’ ruling be and it is hereby denied.
2. That the record herein be and it is hereby reopened to explore the relationship, if any, direct or indirect, between Great Lakes and Currey.”

By this order, the Board has thrown open the proceeding to all parties for the purpose of exploring into matters which were covered exhaustively during the course of the hearings in Docket 5132 in Los Angeles during 1953. The hearings in Los Angeles in 1953, concerning applicants Great Lakes Airlines, Inc. and Currey Air Transport Limited, were in session during the period from August, 1953, to December, 1953. A substantial portion of this time was spent in exploring the alleged relationship between Great Lakes and Currey. Approximately four thousand (4,000) pages of the record in Docket 5132 were devoted to the cases of Great Lakes and Currey during the Los Angeles session in 1953. Numerous exhibits were introduced by the various parties during the course of the exploration.

The Board’s order stems from an appeal by American Airlines from the ruling of the Examiners concerning the admissibility of the testimony of Malcolm G. Robertson in Docket 6908, and an alternative motion by American for a limited reopening of the proceeding in Docket 5132. But the Board order goes far beyond the relief requested by American. American requests that the Board reverse the Examiners’ ruling with respect to the admissibility in this proceeding of the testimony of Malcolm G. Robertson in Docket 6908, or, in the alternative, modify its order reopening the proceeding herein with

respect to Great Lakes to the limited extent necessary to permit the introduction of the Robertson testimony. The Board's order throws the proceeding open to all parties for the purpose of "exploring" an alleged relationship which has already been explored fully during the course of three and one-half months of hearings in Los Angeles in 1953.

Nothing new whatever has been presented to the Board which would warrant such a procedure. Robertson's testimony in Docket 6908 concerns events which occurred in 1951, and which events were the subject of testimony by other witnesses who appeared in the Los Angeles session of the hearings in Docket 5132 during 1953. It is clear from the record, the appeal of American, and the brief of Great Lakes in opposition, that the existence of Robertson and his participation in the events concerning which he testified in Docket 6908 were known during the course of the Los Angeles hearings in Docket 5132 during 1953, and that American or any other party had ample opportunity to call Robertson to testify in connection with the alleged relationship between Great Lakes and Currey, which was being fully explored at that time. [See Tr. 22591, *et seq.*]

## II.

Order No. E-9814, insofar as it applies to Petitioners, is in violation of the Fifth Amendment of the Constitution of the United States and the Administrative Procedure Act, and is arbitrary, unreasonable and capricious for the following reasons:

- (a) There is no basis in the record or otherwise for reopening the proceeding with respect to Petitioners;

- (b) The order is in conflict with the Board's previous orders in this proceeding, particularly Order No. E-5722, as amended, dated September 21, 1951; Order No. E-8052, dated January 20, 1954; and Order E-9584, dated September 22, 1955;
- (c) The order is vague, ambiguous, uncertain, and unintelligible;
- (d) The order is discriminatory with respect to Petitioners in that it accords Petitioners unequal treatment with the other applicants in this proceeding, and compels Petitioners to go through the same proceeding twice without reason or purpose.

On September 22, 1955, the Board ordered (Order No. E-9584):

"1. That the record herein be and it is reopened to permit the parties to present additional evidence concerning changes in qualifications which have occurred since the presentation of evidence on that issue with respect to All American Airways, Inc., American Air Export and Import Company, Capitol Airways, Inc., Central Air Transport, Inc., Economy Airways, Inc., Great Lakes Airlines, Inc., Overseas National Airways, Trans Caribbean Airways, Inc., and United States Overseas Airlines, Inc."

Since September 22, 1955, and pursuant to Order No. E-9584, Petitioner Great Lakes has participated in hearings in Washington, D. C., and Los Angeles, California, and has presented additional evidence through witnesses and exhibits with respect to changes in the qualifications of Great

Lakes which have occurred since the prior hearings in this proceeding.

Without any basis whatever the Board now singles out these Petitioners from some sixty applicants and subjects them to further hearings of indeterminate scope and length in complete disregard of and contrary to the issues defined by the Board in Order No. 9584. Petitioners contend that by the arbitrary and discriminatory action reflected in Order No. 9814, the Board has denied to Petitioners due process of law and equal protection of the law. To limit the issues as to all parties in Order No. 9584, and then to enlarge the issues as to these Petitioners only in Order No. 9814 is arbitrary, unreasonable and capricious.

- (e) The order places an unreasonable and unnecessary burden of expense and hardship upon Petitioners;
- (f) The order will result in unnecessary and unreasonable delay in reaching the final decision sought by Petitioners in this proceeding.
- (g) The order constitutes a denial of due process and equal protection of the law insofar as it applies to Petitioners.

### III.

The Board's Order No. E-9814 is ambiguous. While it appears from the recitals preceding the directory part of the order that the Board is limiting its order reopening the proceeding to the testimony of Malcolm G. Robertson in Docket 6908, the directory part of the order does not limit the reopened hearing to the testimony of Robertson, but throws the proceeding open to all parties to explore without limitation or direction the relationship,

if any, between Great Lakes and Currey. The scope of the proceeding is measured by the directory part of the Board's order and not by recitals in the order, except where the recitals may be necessary to throw light upon the rest of the order. *W. R. Grace & Company v. Civil Aeronautics Board, et al.* (1946), 154 F. 2d 271; 2 AVI. 14116 (C. C. A. 2).

In view of the patent ambiguity existing in the present order, the order should be clarified, in the event the Board does not reverse the order as requested herein, by limiting the scope of any reopened proceeding to the testimony of Robertson. Further, in view of the Board's consideration of American's proposed exhibit AA-520 in connection with American's appeal, which exhibit contains references to the testimony of Robertson in Docket 6908, the Board's order should provide further that the testimony of Robertson to be admissible must be given in person and that Robertson shall be made available for full cross-examination by the parties. (See authorities cited in Great Lakes' brief in opposition to American's appeal in support of this proposition.)

#### IV.

By Notice to All Parties, dated December 9, 1955, the Examiners have notified Petitioners that the hearing of evidence on the relationship between Great Lakes and Currey under Order No. E-9814, dated December 7, 1955, is set for 10:00 A.M. January 4, 1956, in Washington, D. C. The hearing pursuant to Order No. E-9814 should not commence prior to the Board's decision on this Petition for Reconsideration of said order. Furthermore, Petitioners request that the hearing, if any, be held in Los Angeles, California. It would be an undue burden to require Petitioners to proceed to Washington for a



hearing on matters which could have been heard in Los Angeles in 1953, in this proceeding, but for the failure of American and the other parties to call a known and available witness at that time to testify to matters then under investigation in the hearing, when the witness' participation in the matters then being investigated was known to all parties at that time.

V.

Petitioners request that the Board make an immediate decision and order with respect to this Petition in order that Petitioners may have sufficient time to seek judicial review in accordance with Section 1006 of the Civil Aeronautics Act of 1938, as amended (49 U. S. C. A. 646).

WHEREFORE, Petitioners pray:

(1) That the Board reconsider Order No. 9814 and reverse paragraph (2) of said Order reopening the record;

(2) That if the Board does not reverse said order as requested, that the Board issue an order clarifying Order No. 9814, limiting the scope of any reopened proceeding to the taking of the oral testimony of Malcolm G. Robertson, and any cross-examination and rebuttal in connection therewith;

(3) That the Board stay the hearing in Docket 5132 with respect to these Petitioners now set for 10:00 A.M., January 4, 1956, in Washington, D. C., pending the Board's decision on this Petition;

(4) That any hearing held pursuant to Order No. 9814 or any further order be held in Los Angeles, California, with respect to these Petitioners;

(5) That the Board make an immediate decision on this Petition in order to allow Petitioners sufficient time to seek judicial review in accordance with Section 1006 of the Civil Aeronautics Act of 1938, as amended (49 U. S. C. A. 646);

(6) For such other and further relief as may be just and proper.

Dated: December 16, 1955, at Los Angeles, California.

Respectfully submitted,

KEATINGE AND OLDER

By /s/ CHARLES H. OLDER

Charles H. Older

Attorneys for Petitioners.

CERTIFICATE OF SERVICE

I hereby certify that I have this day deposited in the mail a copy of the foregoing Petition for Reconsideration to all of the parties of record hereto. Said copies were placed in properly addressed envelopes with postage pre-paid.

Dated: December 16, 1955, at Los Angeles, California.

KEATINGE AND OLDER

By /s/ CHARLES H. OLDER

Charles H. Older

Attorneys for Petitioners.

**Exhibit "I."**

Order No. E-9871

UNITED STATES OF AMERICA  
CIVIL AERONAUTICS BOARD  
Washington, D. C.

Adopted by the Civil Aeronautics Board  
at its office in Washington, D. C. on  
the 23rd day of December, 1955

In the matter of the Large Irregular Air Carrier Investigation. Docket No. 5132.

ORDER DENYING PETITION FOR RECONSIDERATION.

Great Lakes Airlines, Inc. (Great Lakes), and Currey Air Transport Limited (Currey) have filed a joint petition for reconsideration and other relief<sup>1</sup> from the Board's order of December 7, 1955 (Order No. E-9814) (1) denying an appeal of American Airlines, Inc. (American), from a ruling of the Examiner pertaining to admission of certain evidence and (2) reopening the record to explore the relationship, if any, direct or indirect, between Great Lakes and Currey.

Except insofar as discussed hereafter, the petition raises nothing new in the way of fact or argument that requires reconsideration. We do wish to comment specifically on several of the arguments advanced.

(1) The petition alleges that our order is vague, ambiguous, uncertain and unintelligible. The only ground cited is an alleged conflict between the recitals of fact and the ordering paragraph. There can be no conflict, however, since both are in exactly the same terminology.

---

<sup>1</sup>While time for answer to this petition has not run, in view of the nature of the action and in view of the request for immediate decision, the Board considers it in the public interest to act on this petition immediately.

The order goes beyond the scope of American's specific request to reopen for the obvious reason that other parties, petitioners included, may have additional or rebuttal evidence relevant to the relationship between the companies that may properly be heard in connection with the evidence American will adduce.

(2) The petition charges that our order is discriminatory inasmuch as it reopens the record only as to the petitioners and not as to the entire group. However, there is not the slightest intimation that there is cause to reopen the record as to other applicants. In our view the sound exercise of our discretion does not require us to reopen the record where no reason is alleged, merely to maintain a purely hypothetical procedural parity.

(3) The petition further charges that the reopening imposes an unreasonable and unnecessary burden of expense and hardship on the petitioners and will unreasonably and unnecessarily delay the final decision in the case. These charges are also unsupported, but in any event we consider the question raised by American's motion of sufficient import to the public interest to warrant the further examination of the relations between the applicants. Even if the substantive question as to the qualifications of the applicants were not so important, the Board would consider the preservation of the integrity of and respect for its hearing processes of sufficient importance to justify the inquiry into the apparent conflict in testimony concerning the petitioners.

(4) The petitioners request that we order any further hearings on the question raised by American's motion to be held in Los Angeles rather than Washington, where the Examiners have scheduled the hearing. They state that it would be an undue burden to require a hearing in Washington on evidence that could have been presented

in Los Angeles in 1953 but for American's failure to call the witness at that time. The petition again fails to allege any basis for its charge of undue burden. In the present posture of the case the Board cannot ascertain what witnesses will in fact be called or that there is any reason whatsoever for returning the hearing to Los Angeles. Moreover, the conduct of these hearings is still in the hands of our Examiner and any such request should be addressed to the Examiner, in the first instance, with appropriate supporting reasons. We are confident that the Examiner will give due consideration to such a request and take appropriate action if, at the reopened hearing, it appears that there is any good reason for hearing evidence in Los Angeles.

(5) Finally, the petitioners insist that our order should provide that American's evidence will be given by oral testimony rather than by incorporation of testimony from another proceeding. This matter is clearly within the province of the Examiner and is not properly before the Board in the absence of a ruling by the Examiner.

We have considered the allegations of the petition for reconsideration filed by Great Lakes and Currey and have concluded that they state no adequate grounds for relief. Accordingly, the petition will be denied.

IT IS THEREFORE ORDERED, That the petition for reconsideration of the Board's Order No. E-9814 filed on behalf of Great Lakes Airlines, Inc., and Currey Air Transport Limited be, and it hereby is, denied.

By the Civil Aeronautics Board:

/s/ M. C. Mulligan  
M. C. Mulligan  
Secretary

(Seal)

Exhibit "J."

WESTERN UNION TELEGRAM

(55) . . .

1955 Dec. 29 AMI 7 35

LA009 OD164

O WA083 29 Collect—WUX Washington DC 29 943  
AME—

Charles H Older Keatinge and Older—  
621 South Spring St LOSA—

Reurtel Dec 28, 1955, Hearing Order Docket 5132  
Amended to Change Great Lakes-Currey Relationship to  
follow Peninsular or on Jan 17, 1956, whichever date  
later—

Ralph L Wiser Civil Aeronautics Board—  
28 1955 5132 17 1956—